



**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-223**

Date last adopted: **March 30, 1983**

Reviewer: **Lorraine Johnson**

Date review completed: **January 31, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

**Rule 223 is twofold in its purpose. The first portion provides an index to other rules addressing various occupations that often use contracts on the basis of time and materials, or cost-plus-fixed-fee. The second portion goes into detail on how to compute or measure tax when these types of contracts are used.**

2. Need:

YES	NO	
<b>X</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>X</b>	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	<b>X</b>	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>X</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.



**This rule explains how to measure the B&O and retail sales tax obligation of persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.**

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	<b>X</b>	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	<b>X</b>	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
	<b>N/A</b>	Should this ancillary document be incorporated into a rule?
	<b>N/A</b>	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
	<b>N/A</b>	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
<b>X</b>		Is the document written and organized in a clear and concise manner?
<b>X</b>		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
<b>X</b>		Is the document providing the result(s) that it was originally designed to



		achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	<b>X</b>	Do changes in industry practices warrant repealing or revising this document?
	<b>X</b>	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**As the rule is clear, accurate, and effective, there is no need to revise the rule at this time.**

**The information provided in Rule 223 is essential for determining the measure of tax when time and material or cost-plus-fixed-fee contracts are used. This information is especially important for those in the construction business. No other rule goes into such detail.**

**While the rule should be retained at this time, the Department should incorporate the tax-reporting information into those rules addressing activities that commonly use these types of contracts, such as but not limited to WAC 458-20-170 (Constructing and repairing of new or existing buildings...). This will reduce the need for readers to look to multiple documents to determine their tax liability. Rule 223 can then be repealed.**

5. Intent and Statutory Authority:

YES	NO	
<b>X</b>		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
<b>X</b>		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	<b>X</b>	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**RCW 82.32.300 authorizes and directs the Department of Revenue to make and publish rules.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	<b>X</b>	Could consultation and coordination with other governmental entities and/or



		state agencies eliminate or reduce duplication and inconsistency?
--	--	---

Please explain.

**The Department of Revenue has the exclusive authority to administer the B&O and retail sales tax in this area.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>X</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**This is an interpretative rule that imposes no new or additional administrative burdens that are not already imposed by law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
<b>X</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>X</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>X</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**This document currently results in the equitable treatment of those required to comply with it.**



9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

**To the extent the following apply to time and material or cost-plus-fixed-fee contracts:**

- **RCW 82.04.070 “Gross proceeds of sales”**
- **RCW 82.04.080 “Gross income of the business”**
- **RCW 82.04.220 “Business and occupation tax imposed”**
- **RCW 82.08.020 “Tax imposed--retail sales--retail car rental”**
- **RCW 82.14.030 “Sales and use taxes authorized--Additional taxes authorized--Maximum rates”**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

**There are no Ancillary Documents.**

Court Decisions:

**There are no Court Decisions.**

Board of Tax Appeals Decisions (BTAs):

**There is no Board of Tax Appeals Decisions.**

Administrative Decisions (e.g., WTDs):

**10 WTD 282 – Retail Sales – Amounts paid by contractor and “reimbursed” by buyer – subject to sales tax.**

**11 WTD 521 – Service B&O Tax – Time and materials contract – primary business activity – basic ordering agreement.**

**14 WTD 022 – Retailing B&O Tax – Prime contractor – payment to third parties by owner – gross income.**

Attorney General’s Opinions (AGOs):

**There are no Attorney General Opinions.**



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **RCW 82.04.255 “Tax on real estate brokers”**
- **WAC 458-20-136 “Manufacturing, processing for hire, fabricating”**
- **WAC 458-20-170 “Constructing and repairing of new or existing buildings or other structures upon real property”**
- **WAC 458-20-171 “Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic”**
- **WAC 458-20-172 “Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services”**
- **WAC 458-20-224 “Service and other business activities”**

**10. Review Recommendation:**

\_\_\_\_\_ Amend

\_\_\_\_\_ Repeal

\_\_\_\_\_ **X** Leave as is

\_\_\_\_\_ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

\_\_\_\_\_ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you’ve identified/recommended earlier in this review document.)

**Rule 223 should be retained at this time. The Department should nonetheless incorporate this tax-reporting information into other rules addressing activities that commonly use these types of contracts when those rules are next reviewed (e.g., Rule 170). This will reduce the need for readers to look to multiple documents to determine their tax liability.**

**11. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed recommendation      \_\_\_\_\_ Accepted recommendation

\_\_\_\_\_ Returned for further action

Comments: